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SENATE BILL

No. 773

Introduced by Senator Speier and Assembly Members Nation and Jackson

(Principal coauthor: Senator Burton)

~~(Principal coauthor: Assembly Member Alquist~~ ***coauthors: Assembly Members Alquist and Rod Pacheco)***

(Coauthors: Senators Bowen and Peace)

~~(Coauthors: Assembly Members Chan, Chu, Cohn, Corbett, Goldberg, Keeley, Kehoe, Liu, Lowenthal, Migden, Pavley, Reyes, Shelley, Cohn, and Simitian~~ ***Simitian, Steinberg, and Strom-Martin)***

February 23, 2001

An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies,~~as specified.~~ *Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated third parties.*

This bill would enact the California Financial Information Privacy Act, which would require a financial institution, as defined, to provide ~~a specified notice written form to, and to obtain the consent of,~~ a consumer ~~before disclosing to or relative to the sharing of the consumer's confidential consumer information, as defined, with any nonaffiliated 3rd party, subject to certain exceptions.~~ The bill would also require a financial institution to provide its consumers with a ~~written form that allows the consumer the opportunity to request, among other things, that the financial institution refrain from sharing the confidential consumer information of the consumer with an affiliate of the financial institution or outside companies.~~ The bill would allow a consumer to direct the financial institution to not share the confidential consumer information with affiliated companies or with nonaffiliated financial companies with which the financial institution has contracted to provide financial products and services. The bill would require the permission of the consumer before the financial institution could share the confidential consumer information with other nonaffiliated companies. The bill would provide that a financial institution is not required to provide this written form to its consumers if the financial institution does not disclose any confidential consumer information to any nonaffiliated 3rd party or to any affiliate.

This bill would provide that a financial institution shall not deny a consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share confidential consumer information ~~with~~



~~any nonaffiliated 3rd party.~~ The bill would require a financial institution to comply with the consumer's request regarding confidential consumer information within 45 days of receipt of the request.

This bill would provide that the bill would not apply to disclosures between certain types of member-owned financial institutions and their affiliates provided that certain requirements are met. The bill would also provide that a financial institution may disclose confidential consumer information to an affiliate or a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met. *The bill would provide other exceptions from its provisions applicable to particular situations.*

The bill would provide that confidential consumer information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.

The bill would also provide for disclosure of confidential consumer information under various other specified circumstances.

The bill would provide *on January 1, 2003*, that enactment of these provisions preempts all local *agency ordinances and regulations* relating to this subject.

The bill would enact other related provisions.

The bill would also provide various civil penalties for negligent, or knowing and willful violations of these provisions.

The bill would, *except as provided above*, become operative on November 1, 2003, except that penalties under the bill would not become operative until July 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 1.2 (commencing with Section 4050)
2 is added to the Financial Code, to read:

3
4 DIVISION 1.2. CALIFORNIA FINANCIAL
5 INFORMATION PRIVACY ACT
6

7 4050. This division shall be known and may be cited as the
8 California Financial Information Privacy Act. This division shall

1 become operative on November 1, 2003, *except that Section*
2 *4058.6 shall become operative on January 1, 2003.*

3 4051. (a) The Legislature intends for financial institutions to
4 provide their consumers notice and meaningful choice about how
5 consumers' personal information is shared or sold by their
6 financial institutions.

7 (b) It is the intent of the Legislature in enacting the California
8 Financial Information Privacy Act to afford persons greater
9 privacy protection than those provided in Public Law 106–102, the
10 federal Gramm-Leach-Bliley Act, and that this division be
11 interpreted to be consistent with that purpose.

12 4052. For the purposes of this division:

13 (a) “Confidential consumer information” means personally
14 identifiable financial information (1) provided by a consumer to
15 a financial institution, (2) resulting from any transaction with the
16 consumer or any service performed for the consumer, or (3)
17 otherwise obtained by the financial institution. Confidential
18 consumer information does not include publicly available
19 information that the financial institution has a reasonable basis to
20 believe is lawfully made available to the general public from (1)
21 federal, state, or local government records, (2) widely distributed
22 media, or (3) disclosures to the general public that are required to
23 be made by federal, state, or local law. Confidential consumer
24 information shall include any list, description, or other grouping
25 of consumers, and publicly available information pertaining to
26 them that is derived using any nonpublic personal information
27 other than publicly available information, but shall not include any
28 list, description, or other grouping of consumers, and publicly
29 available information pertaining to them that is derived without
30 using any confidential consumer information.

31 (b) “Personally identifiable financial information” means
32 information (1) that a consumer provides to a financial institution
33 to obtain a product or service from the financial institution, (2)
34 about a consumer resulting from any transaction involving a
35 product or service between the financial institution and a
36 consumer, or (3) that the financial institution otherwise obtains
37 about a consumer in connection with providing a product or
38 service to that consumer. Any personally identifiable information
39 is financial if it was obtained by a financial institution in
40 connection with providing a financial product or service to a

1 consumer, including the fact that a consumer is a customer of a
2 financial institution or has obtained a financial product or service
3 from a financial institution. Personally identifiable financial
4 information includes all of the following:

5 (1) Information a consumer provides to a financial institution
6 on an application to obtain a loan, credit card, or other financial
7 product or service.

8 (2) Account balance information, payment history, overdraft
9 history and credit or debit card purchase information.

10 (3) The fact that an individual is or has been a customer of a
11 financial institution or has obtained a financial product or service
12 from a financial institution.

13 (4) Any information about a financial institution's consumer if
14 it is disclosed in a manner that indicates that the individual is or has
15 been the financial institution's consumer.

16 (5) Any information that a consumer provides to a financial
17 institution or that a financial institution or its agent otherwise
18 obtains in connection with collecting on a loan or servicing a loan.

19 (6) Any personally identifiable financial information collected
20 through an Internet cookie or an information collecting device
21 from a Web server.

22 (7) Information from a consumer report.

23 (c) "Financial institution" means any institution the business
24 of which is engaging in financial activities as described in Section
25 1843(k) of Title 12 of the United States Code and doing business
26 in this state. An institution that is not significantly engaged in
27 financial activities is not a financial institution. The term
28 "financial institution" does not include the Federal Agricultural
29 Mortgage Corporation or any entity chartered and operating under
30 the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.),
31 provided that the entity does not sell or transfer confidential
32 consumer information to a nonaffiliated third party. The term
33 "financial institution" does not include institutions chartered by
34 Congress specifically to engage in a proposed or actual
35 securitization, secondary market sale, including sales of servicing
36 rights, or similar transactions related to a transaction of the
37 consumer, as long as those institutions do not sell or transfer
38 confidential consumer information to a nonaffiliated third party.
39 The term "financial institution" does not include any person
40 licensed as a dealer under Article 1 (commencing with Section

1 11700) of Chapter 4 of Division 5 of the Vehicle Code that enters
2 into contracts for the installment sale or lease of motor vehicles
3 pursuant to the requirements of Chapter 2b (commencing with
4 Section 2981) or 2d (commencing with Section 2985.7) of Title 14
5 of Part 4 of Division 3 of the Civil Code and assigns substantially
6 all of those contracts to financial institutions within 30 days. The
7 term “financial institution” does not include any provider of
8 professional services, or any wholly owned affiliate thereof, that
9 is prohibited by rules of professional ethics or applicable law from
10 voluntarily disclosing confidential client information without the
11 consent of the client.

12 (d) “Affiliate” means any ~~person or~~ entity that controls, is
13 controlled by, or is under common control with another ~~person or~~
14 entity, *but does not include a joint employee of the entity and the*
15 *affiliate*. A franchisor, including any affiliate thereof, shall be
16 deemed an affiliate of the franchisee for purposes of this division.
17 A financial institution and one or more of its affiliated entities shall
18 be deemed a single entity for purposes of this division to the extent
19 that (1) the financial institution and its affiliated entities are
20 offering financial products or services in conjunction with and as
21 part of a business that is significantly engaged in at least the
22 following financial activities: (A) investment management
23 services, (B) portfolio advisory services, and (C) financial
24 planning, and (2) the operations of the financial institution and its
25 affiliated entities are integrated and that integration facilitates the
26 provision of those services.

27 (e) “Nonaffiliated third party” means any entity that is not an
28 affiliate of, or related by common ownership or affiliated by
29 corporate control with, the financial institution, but does not
30 include a joint employee of that institution and a third party.

31 (f) “Consumer” means an individual resident of this state who
32 obtains or has obtained a financial product or service from a
33 financial institution that is to be used primarily for personal,
34 family, or household purposes, or that individual’s legal
35 representative. For purposes of this division, an individual resident
36 of this state is someone whose last known mailing address, other
37 than an Armed Forces Post Office or Fleet Post Office address, as
38 shown in the records of the financial institution, is located in this
39 state. For purposes of this division, an individual is not a consumer
40 of a financial institution solely because he or she is (1) a participant

1 or beneficiary of an employee benefit plan that a financial
2 institution administers or sponsors, or for which the financial
3 institution acts as a trustee, insurer, or fiduciary, (2) covered under
4 a group or blanket insurance policy or group annuity contract
5 issued by the financial institution, (3) a beneficiary in a workers'
6 compensation plan, (4) a beneficiary of a trust for which the
7 financial institution is a trustee, or (5) a person who has designated
8 the financial institution as trustee for a trust provided that (A) the
9 financial institution provides all required notices and rights
10 required by this division to the plan sponsor, group or blanket
11 insurance policyholder, or group annuity contractholder and (B)
12 the financial institution does not disclose to any affiliate or any
13 nonaffiliated third-party confidential consumer information about
14 the individual except as authorized in Section 4056. A consumer
15 does not include an individual who obtains products or services for
16 business, commercial, or agricultural purposes.

17 (g) "Control" means (1) ownership or power to vote 25
18 percent or more of the outstanding shares of any class of voting
19 security of a company, acting through one or more persons, (2)
20 control in any manner over the election of a majority of the
21 directors, or of individuals exercising similar functions, or (3) the
22 power to exercise, directly or indirectly, a controlling influence
23 over the management or policies of a company. However, for
24 purposes of the application of the definition of control as it relates
25 to credit unions, a credit union has a controlling influence over the
26 management or policies of a credit union service organization
27 (CUSO), as that term is defined by state or federal law or
28 regulation, if the CUSO is at least 67 percent owned by credit
29 unions. For purposes of the application of the definition of control
30 to a financial institution subject to regulation by the United States
31 Securities and Exchange Commission, a person who owns
32 beneficially, either directly or through one or more controlled
33 companies, more than 25 percent of the voting securities of a
34 company is presumed to control the company, and a person who
35 does not own more than 25 percent of the voting securities of a
36 company is presumed not to control the company, and a
37 presumption regarding control may be rebutted by evidence, but
38 in the case of an investment company, the presumption shall
39 continue until the United States Securities and Exchange
40 Commission makes a decision to the contrary according to the



1 procedures described in Section 2(a)(9) of the federal Investment
2 Company Act of 1940.

3 (h) “Necessary to effect, administer, or enforce” means the
4 following:

5 (1) The disclosure is required, or is a usual, appropriate, or
6 acceptable method to carry out the transaction or the product or
7 service business of which the transaction is a part, and record or
8 service or maintain the consumer’s account in the ordinary course
9 of providing the financial service or financial product, or to
10 administer or service benefits or claims relating to the transaction
11 or the product or service business of which it is a part, and includes
12 the following:

13 (A) Providing the consumer or the consumer’s agent or broker
14 with a confirmation, statement, or other record of the transaction,
15 or information on the status or value of the financial service or
16 financial product.

17 (B) The accrual or recognition of incentives or bonuses
18 associated with the transaction or communications to eligible
19 existing consumers of the financial institution regarding the
20 availability of those incentives and bonuses that are provided by
21 the financial institution or another party.

22 (C) With respect to a financial institution that has issued a credit
23 account bearing the name of a company primarily engaged in retail
24 sales or a name proprietary to a company primarily engaged in
25 retail sales, providing the retailer, or licensees or contractors of the
26 retailer that provide products or services in the name of the retailer
27 and under a contract with the retailer, with confidential consumer
28 information concerning the credit account in connection with the
29 marketing or provision of the products or services of the retailer
30 and those licensees or contractors.

31 (2) The disclosure is required or is one of the lawful or
32 appropriate methods to enforce the rights of the financial
33 institution or of other persons engaged in carrying out the financial
34 transaction or providing the product or service.

35 (3) The disclosure is required, or is a usual, appropriate, or
36 acceptable method for insurance underwriting or the placement of
37 ~~insuring~~ insurance products by licensed agents and brokers with
38 authorized insurance companies at the consumer’s request, for
39 reinsurance, stop loss insurance, or excess loss insurance

1 purposes, or for any of the following purposes as they relate to a
2 consumer's insurance:

3 (A) Account administration.

4 (B) Reporting, investigating, or preventing fraud or material
5 misrepresentation.

6 (C) Processing premium payments.

7 (D) Processing insurance claims.

8 (E) Administering insurance benefits, including utilization
9 review activities.

10 (F) Participating in research projects.

11 (G) As otherwise required or specifically permitted by federal
12 or state law.

13 (4) The disclosure is required, or is a usual, appropriate, or
14 acceptable method, in connection with the following:

15 (A) The authorization, settlement, billing, processing,
16 clearing, transferring, reconciling, or collection of amounts
17 charged, debited, or otherwise paid using a debit, credit or other
18 payment card, check, or account number, or by other payment
19 means.

20 (B) The transfer of receivables, accounts, or interests therein.

21 (C) The audit of debit, credit, or other payment information.

22 (5) *The disclosure is required in a transaction covered by the*
23 *federal Real Estate Settlement Procedures Act (12 U.S.C. Sec.*
24 *2601 et seq.) in order to offer settlement services prior to the close*
25 *of escrow (as those services are defined in 12 U.S.C. Sec. 2602),*
26 *provided that (A) the confidential consumer information is*
27 *disclosed for the sole purpose of offering those settlement services*
28 *and (B) the confidential consumer information disclosed is limited*
29 *to that necessary to enable the financial institution to offer those*
30 *settlement services.*

31 (i) "Financial product or service" means any product or
32 service that a financial holding company could offer by engaging
33 in *an activity that is financial in nature or incidental to a financial*
34 *activity under subsection (k) of Section 1843 of Title 12 of the*
35 *United States Code (the United States Bank Holding Company Act*
36 *of 1956). Financial service includes a financial institution's*
37 *evaluation or brokerage of information that the financial*
38 *institution collects in connection with a request or an application*
39 *from a consumer for a financial product or service.*

1 (j) “Clear and conspicuous” means that a notice is reasonably
2 understandable and designed to call attention to the nature and
3 significance of the information in the notice.

4 (k) “Widely distributed media” means media available to the
5 general public ~~on an unrestricted basis~~ and includes a telephone
6 book, a television or radio program, a newspaper, or a Web site
7 that is available to the general public *on an unrestricted basis*.

8 4053. (a) A financial institution shall not disclose to, or share
9 a consumer’s confidential consumer information with, any
10 nonaffiliated third party unless the financial institution has
11 provided written notice pursuant to subdivision (c), to the
12 consumer to whom the confidential consumer information relates
13 and unless the financial institution has obtained a consent
14 acknowledgment from the consumer pursuant to subdivision (c),
15 that authorizes the financial institution to disclose or share the
16 confidential consumer information. Nothing in this section shall
17 prohibit the disclosure of confidential consumer information as
18 allowed in Section 4056. A financial institution shall not deny a
19 consumer a financial product or a financial service because the
20 consumer has not provided the consent required by this
21 subdivision to authorize the financial institution to disclose or
22 share his or her confidential consumer information with any
23 nonaffiliated third party. Nothing in this section is intended to
24 prohibit a financial institution from offering incentives to elicit a
25 specific response to the notice.

26 (b) (1) A financial institution shall not disclose to, or share a
27 consumer’s confidential consumer information with, an affiliate
28 unless the financial institution clearly and conspicuously notifies
29 the consumer annually, commencing on November 1, 2003, in
30 writing to the consumer pursuant to subdivision (c) that the
31 information may be disclosed to an affiliate of the financial
32 institution and the consumer has not directed that the confidential
33 consumer information not be disclosed. A financial institution
34 does not disclose information to, *or share information with*, its
35 affiliate merely because *information is maintained in common*
36 *information systems or databases*, and employees of the financial
37 institution and its affiliate have access to *those* common
38 information systems or databases, or a consumer accesses a Web
39 site jointly operated or maintained under a common name by or on
40 behalf of the financial institution and its affiliate(s), provided that

confidential consumer information is used or otherwise disclosed only as permitted by this division.

(2) Subdivision (a) shall not prohibit the release of confidential consumer information by a financial institution with whom the consumer has a relationship, to a nonaffiliated financial institution or institutions for purposes of jointly offering a financial product or financial service pursuant to a written agreement with the financial institution that receives the confidential consumer information provided that all of the following requirements are met:

(A) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the written agreement.

(B) The financial product or service is jointly offered, endorsed, or sponsored, and ~~prominently~~ *clearly and conspicuously* identifies for the consumer the financial institutions that release the confidential consumer information and the financial institutions that receive that information.

(C) The written agreement provides that the financial institution that receives that confidential consumer information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement.

(D) The financial institution that releases the confidential consumer information has complied with subdivision (c) and the consumer has not directed that confidential consumer information not be disclosed. The financial institution may, at its option, choose instead to comply with the requirements of subdivision (a).

(E) Notwithstanding this section, until January 1, 2004, a financial institution may disclose confidential consumer information to a nonaffiliated financial institution pursuant to a preexisting contract with the nonaffiliated financial institution, for purposes of offering a financial product or financial service, if that contract was entered into on or before January 1, 2003. Beginning on January 1, 2004, no confidential consumer information may be disclosed pursuant to that contract unless all the requirements of this subdivision are met.

(3) Nothing in this subdivision shall prohibit a financial institution from disclosing or sharing confidential consumer information as otherwise specifically permitted by this division.

(c) (1) The form set forth in this subdivision, or one substantially similar shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her confidential consumer information. A form shall not be deemed substantially similar for purposes of this subdivision unless at least all of the following requirements are met:

(A) The form uses the same title (“IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS”) and headers (headings designated in all capital letters in the form set forth below, such as “SHARING INFORMATION WITH AFFILIATED COMPANIES”).

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document.

(2) (A) None of the instructional items appearing in parentheses in the form set forth below shall appear in the form provided to the consumer, as those items are for explanation purposes only. *If a financial institution does not disclose or share confidential consumer information as described in any one or more of the first three headers of the form, the financial institution is not required to include the applicable header or headers, and the accompanying information and box, in the form it provides pursuant to this subdivision.*

1 PRINTER: PLEASE NOTE: TIP-IN MATERIAL TO BE
2 INSERTED

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2 (B) If a consumer selects the box associated with the header
3 restricting information sharing to the greatest extent allowed by
4 law, that choice shall supersede all other choices.

5 (C) A financial institution shall not be in violation of this
6 subdivision solely because it includes in the form one or more brief
7 examples or explanations of the purpose or purposes, or context,
8 within which information will be shared.

9 (D) The outside of the envelope in which the form is sent shall
10 clearly state in 16-point boldface type “IMPORTANT PRIVACY
11 CHOICES,” except that a financial institution sending the form to
12 a consumer in the same envelope as ~~an~~ *a bill or* account statement
13 does not have to include the wording “IMPORTANT PRIVACY
14 CHOICES” on that envelope. The form shall be sent in any of the
15 following ways:

16 (i) With a bill or other statement of account, *in which case the*
17 *information required by Title V of the Gramm-Leach-Bliley Act*
18 *may also be included.*

19 (ii) As a separate notice or with *the* information required by ~~the~~
20 ~~federal~~ *Title V of the Gramm-Leach-Bliley Act*, and including
21 only information related to privacy.

22 (iii) With any other mailing, in which case it shall be the first
23 page of the mailing.

24 (3) The consumer shall be provided an opportunity, before
25 disclosure of information pursuant to this division, for 45 days
26 from the date of postmark or other postal verification of mailing
27 of the *initial* notice required by this subdivision, to direct that the
28 confidential consumer information not be disclosed except as
29 otherwise permitted by this division. A consumer may direct at any
30 time that his or her confidential consumer information not be
31 disclosed, except as otherwise permitted by this division. A
32 financial institution shall comply with a consumer’s directions
33 concerning the sharing of his or her confidential consumer
34 information within 45 days of receipt by the financial institution.
35 When a consumer directs that confidential consumer information
36 not be disclosed, that direction is in effect until otherwise stated by
37 the consumer.

38 (4) A financial institution shall not deny a consumer a financial
39 product or a financial service because the consumer has directed
40 pursuant to subdivision (b) that his or her confidential consumer

information not be disclosed provided that nothing in this section shall prohibit the disclosure of confidential consumer information allowed by Section 4056. Nothing in this section is intended to prohibit a financial institution from offering incentives to elicit a specific response to the notice.

(5) A financial institution may elect to comply with the requirements of subdivision (a) with respect to disclosure of confidential consumer information to an affiliate or with respect to confidential consumer information disclosed pursuant to paragraph (2) of subdivision (b).

(6) If a financial institution does not have a continuing relationship with a consumer other than the initial transaction in which the product or service is provided, no annual disclosure requirement exists pursuant to this section as long as the financial institution provides the consumer with the form required by this section at the time of the initial transaction. As used in this section, “annually” means at least once in any period of 12 consecutive months during which that relationship exists. The financial institution may define the 12-consecutive-month period, but shall apply it to the consumer on a consistent basis. If, for example, a financial institution defines the 12-consecutive-month period as a calendar year and provides the annual notice to the consumer once in each calendar year, it complies with the requirement to send the notice annually.

(7) A financial institution with assets in excess of twenty-five million dollars (\$25,000,000) shall include a self-addressed postage paid return envelope with the notice. A financial institution with assets of up to and including twenty-five million dollars (\$25,000,000) shall include a self-addressed return envelope with the notice. In addition to the return envelope required by this paragraph, a financial institution may offer additional means for consumers to communicate their privacy choices, included, but not limited to, calling a toll-free number, sending a facsimile, or using electronic means. A financial institution shall clearly and conspicuously disclose in the form required by this subdivision the information necessary to direct the consumer on how to communicate his or her choices, including the toll-free or facsimile number or Web site address that may be used, if those means of communication are offered by the financial institution.

1 (8) A financial institution shall file a copy of the initial notice
2 or notices required by this subdivision with the Attorney General.
3 No subsequent filing is required until the financial institution
4 modifies the notice, in which case a copy of the notice as modified
5 shall be filed with the Attorney General. Nothing in this paragraph
6 shall be construed to require that a financial institution file with the
7 Attorney General a copy of the notice or notices it provides to
8 consumers more often than once in each calendar year. The
9 interpretations of functional regulators regarding the form
10 required by this subdivision are not entitled to deference by a
11 court.

12 (d) Nothing in this division shall prohibit a financial institution
13 from marketing its own products and services or the products and
14 services of affiliates or nonaffiliated third parties to customers of
15 the financial institution as long as (1) confidential consumer
16 information is not disclosed in connection with the delivery of the
17 applicable marketing materials to those customers except as
18 permitted by Section 4056 and (2) in cases in which the applicable
19 nonaffiliated third party may extrapolate confidential consumer
20 information about the consumer responding to those marketing
21 materials, the applicable nonaffiliated third party has signed a
22 contract with the financial institution under the terms of which (A)
23 the nonaffiliated third party is prohibited from retaining or using
24 that information for any purpose, and (B) the financial institution
25 has the right by audit, inspections, or other means to verify the
26 nonaffiliated third party's compliance with that contract.

27 4053.5. Except as otherwise provided in this division, an
28 entity that receives confidential consumer information from a
29 financial institution under this division shall not disclose this
30 information to any other entity, unless the disclosure would be
31 lawful if made directly to the other entity by the financial
32 institution. An entity that receives confidential consumer
33 information pursuant to any exception set forth in Section 4056
34 shall not use or disclose the information except in the ordinary
35 course of business to carry out the activity covered by the
36 exception under which the information was received.

37 4054. (a) Nothing in this division shall require a financial
38 institution to provide a written notice to a consumer pursuant to
39 Section 4053 if the financial institution does not disclose



confidential consumer information to any nonaffiliated third party or to any affiliate, except as allowed in this division.

(b) A notice provided to a member of a household pursuant to Section 4053 shall be considered notice to all members of that household unless that household contains another individual who also has a separate account with the financial institution.

(c) (1) The requirement to send a *written* notice to a consumer may be fulfilled by electronic means if the following requirements are met:

(A) The notice, and the manner in which it is sent, meets all of the requirements for notices that are required by law to be in writing, as set forth in Section 101 of the federal Electronic Signatures in Global and National Commerce Act.

(B) All other requirements applicable to the notice, as set forth in this division, are met, including but not limited to, requirements concerning content, timing, form, and delivery.

(C) The notice shall be delivered to the consumer in a form the consumer may keep.

(2) A notice that is made available to a consumer, and is not delivered to the consumer, does not satisfy the requirements of paragraph (1).

(3) Any electronic consumer reply to an electronic notice sent pursuant to this division is effective. A person that electronically sends a notice required by this division to a consumer may not by contract, or otherwise, eliminate the effectiveness of the consumer's electronic reply.

(4) This division modifies the provisions of Section 101 of the federal Electronic Signatures in Global and National Commerce Act. However, it does not modify, limit, or supersede the provisions of subsection (c), (d), (e), (f), or (h) of Section 101 of the federal Electronic Signatures in Global and National Commerce Act, nor does it authorize electronic delivery of any notice of the type described in subsection (b) of Section ~~101~~ 103 of that federal act.

4054.6. When a financial institution and a membership organization, ~~tax-exempt-charitable-organization~~ organization, ~~not-for-profit organization~~, or a professional sports team that is not a financial institution have an agreement to issue a credit card in the name of the membership organization, ~~tax-exempt-charitable-organization~~ organization, ~~not-for-profit organization~~, or the

1 professional sports team (“affinity card”), the financial institution
2 shall be permitted to disclose to the entity *in* whose name the card
3 is issued, the names and addresses, *including electronic mail*
4 *addresses*, of the financial institution’s consumers in receipt of the
5 affinity card if all of the following requirements are satisfied:

6 ~~(a) The financial institution has provided the notice required by~~
7 ~~this division to the consumer and the consumer has not directed~~
8 ~~that confidential consumer information not be disclosed.~~

9 ~~(b)~~

10 (a) The financial institution has a contractual agreement with
11 the membership organization, tax-exempt ~~charitable organization~~
12 *organization, not-for-profit organization*, or professional sports
13 team that requires the entity in whose name the affinity card is
14 issued to maintain the confidentiality of the confidential consumer
15 information and prohibits the entity in whose name the affinity
16 card is issued from using the information for any purposes other
17 than verifying membership ~~or~~, verifying the affinity cardholder’s
18 address or offering the entity’s own products or services to the
19 cardholder. *Nothing in this section shall prohibit the disclosure of*
20 *confidential consumer information allowed by Section 4056.*

21 ~~(c)~~

22 (b) The customer list is not disclosed in any way that reveals or
23 permits extrapolation of *any additional* confidential consumer
24 information about any customer on the list.

25 (c) *If the entity in whose name the card is issued sends any*
26 *message to any electronic mail addresses obtained pursuant to this*
27 *section, the message shall include at least both of the following:*

28 (1) *The identity of the sender of the message.*

29 (2) *A cost-free means for the recipient to notify the sender not*
30 *to electronically mail any further messages to the recipient.*

31 4055. (a) This division shall not apply to disclosures between
32 a member-owned financial institution and its affiliates, or between
33 like affiliates, provided that the disclosure is primarily for
34 customer service purposes and not for marketing purposes, and
35 that the financial institution meets all of the following
36 requirements:

37 (1) A majority of the financial institution’s consumers are
38 members of the United States military services, veterans of the
39 United States military services, current or former spouses or

1 dependents of these persons and the primary purpose of the
2 financial institution is to serve these persons.

3 (2) The financial institution and its affiliates are in compliance
4 with Title V of the federal Financial Services Modernization Act.

5 (3) Consumers of the financial institution and its affiliates are
6 informed in writing on an annual basis of the opportunity to opt out
7 of information sharing among the institution and its affiliates for
8 marketing purposes.

9 (b) For purposes of this section, “marketing purposes” means
10 for use in unsolicited telemarketing, unsolicited direct mail, or
11 unsolicited commercial electronic mail for the primary purpose of
12 encouraging the purchase or rental of, or investment in, property,
13 goods, or services. For purposes of this section, “marketing
14 purposes” shall not include communications to a person with that
15 person’s prior express invitation or permission, or in response to
16 a communication from such person.

17 ~~(c) This division shall not apply to disclosures between a~~
18 ~~financial institution and its affiliates offering functionally similar~~
19 ~~products within the same line of business.~~

20 4056. (a) This division shall not apply to information that is
21 not personally identifiable to a particular person.

22 (b) Sections 4053 and 4054 shall not prohibit the release of
23 confidential consumer information under the following
24 circumstances:

25 (1) The confidential consumer information is necessary to
26 effect, administer, or enforce a transaction requested or authorized
27 by the consumer, or in connection with servicing or processing a
28 financial product or service requested or authorized by the
29 consumer, or in connection with maintaining or servicing the
30 consumer’s account with the financial institution, or with another
31 entity as part of a private label credit card program or other
32 extension of credit on behalf of such entity, or in connection with
33 a proposed or actual securitization or secondary market sale,
34 including sales of servicing rights, or similar transactions related
35 to a transaction of the consumer.

36 (2) The confidential consumer information is released with the
37 consent of or at the direction of the consumer.

38 (3) The confidential consumer information is:

1 (A) Released to protect the confidentiality or security of the
2 financial institution's records pertaining to the consumer, the
3 service or product, or the transaction therein.

4 (B) Released to protect against or prevent actual or potential
5 fraud, identity theft, unauthorized transactions, claims, or other
6 liability.

7 (C) Released for required institutional risk control, or for
8 resolving customer disputes or inquiries.

9 (D) Released to persons holding a legal or beneficial interest
10 relating to the consumer, including for purposes of debt collection.

11 (E) Released to persons acting in a fiduciary or representative
12 capacity on behalf of the consumer.

13 (4) The confidential consumer information is released to
14 provide information to insurance rate advisory organizations,
15 guaranty funds or agencies, applicable rating agencies of the
16 financial institution, persons assessing the institution's
17 compliance with industry standards, and the institution's
18 attorneys, accountants, and auditors.

19 (5) The confidential consumer information is released to the
20 extent specifically required or specifically permitted under other
21 provisions of law and in accordance with the Right to Financial
22 Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law
23 enforcement agencies, including a federal functional regulator, the
24 Secretary of the Treasury with respect to subchapter II of Chapter
25 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12
26 U.S.C. Secs. 1951-1959), the California Department of Insurance
27 *or other state insurance regulators*, or the Federal Trade
28 Commission, and self-regulatory organizations, or for an
29 investigation on a matter related to public safety.

30 (6) The confidential consumer information is released (A) to a
31 consumer reporting agency in accordance with the Fair Credit
32 Reporting Act (15 U.S.C. Sec. 1681 et seq.); or (B) from a
33 consumer report reported by a consumer reporting agency.

34 (7) The confidential consumer information is released in
35 connection with a proposed or actual sale, merger, transfer, or
36 exchange of all or a portion of a business or operating unit if the
37 disclosure of confidential consumer information concerns solely
38 consumers of the business or unit.

39 (8) The confidential consumer information is released to
40 comply with federal, state, or local laws, rules, and other



1 applicable legal requirements; to comply with a properly
2 authorized civil, criminal, administrative, or regulatory
3 investigation or subpoena or summons by federal, state, or local
4 authorities; or to respond to judicial process or government
5 regulatory authorities having jurisdiction over the financial
6 institution for examination, compliance, or other purposes as
7 authorized by law. ~~This includes allowing information releases for
8 the purpose of identifying or locating missing or abducted
9 children, witnesses, criminals and fugitives, parties to lawsuits,
10 parents delinquent in child support payments, organ and bone
11 marrow donors, pension fund beneficiaries, and missing heirs.~~

12 (9) When a financial institution is reporting a known or
13 suspected instance of elder or dependent adult financial abuse or
14 is cooperating with a local adult protective services agency
15 investigation of known or suspected elder or dependent adult
16 financial abuse pursuant to Article 3 (commencing with Section
17 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and
18 Institutions Code.

19 (10) The confidential consumer information is released to an
20 affiliate or a nonaffiliated third party in order for the affiliate or
21 nonaffiliated third party to perform services, such as mailing
22 services, data processing or analysis, or customer surveys, on
23 behalf of the financial institution, provided that all of the following
24 requirements are met:

25 (A) The services to be performed by the affiliate or
26 nonaffiliated third party could lawfully be performed by the
27 financial institution.

28 (B) There is a written contract between the affiliate or
29 nonaffiliated third party and the financial institution that prohibits
30 the affiliate or nonaffiliated third party, as the case may be, from
31 disclosing or using the confidential consumer information other
32 than to carry out the purpose for which the financial institution
33 disclosed the information, as set forth in the written contract.

34 (C) The confidential consumer information provided to the
35 affiliate or nonaffiliated third party is limited to that which is
36 reasonably necessary for the affiliate or nonaffiliated third party
37 to perform the services contracted for on behalf of the financial
38 institution.

39 (D) The financial institution does not receive any payment
40 from or through the affiliate or nonaffiliated third party in

1 connection with, or as a result of, the release of the confidential
2 consumer information.

3 (11) *The confidential consumer information is released to*
4 *identify or locate missing and abducted children, witnesses,*
5 *criminals and fugitives, parties to lawsuits, parents delinquent in*
6 *child support payments, organ and bone marrow donors, pension*
7 *fund beneficiaries, and missing heirs.*

8 (12) The confidential consumer information is released to a
9 real estate appraiser licensed or certified by the state for
10 submission to central data repositories such as the California
11 Market Data Cooperative, and the confidential consumer
12 information is compiled strictly to complete other real estate
13 appraisals and is not used for any other purpose.

14 (13) *The confidential consumer information is released as*
15 *required by Title III of the federal United and Strengthening*
16 *America by Providing Appropriate Tools Required to Intercept and*
17 *Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L. 107-56).*

18 (c) Nothing in this division is intended to change existing law
19 relating to access by law enforcement agencies to information held
20 by financial institutions.

21 4056.5. (a) The provisions of this division do not apply to any
22 person or entity that meets the requirements of paragraph (1) or (2)
23 below. However, when confidential consumer information is
24 being or will be shared by a person or entity meeting the
25 requirements of paragraph (1) or (2) with an affiliate or
26 nonaffiliated third party, this division shall apply.

27 (1) The person or entity is licensed in one or both of the
28 following categories and is acting within the scope of the
29 respective license or certificate:

30 (A) As an insurance producer, licensed pursuant to Chapter 5
31 (commencing with Section 1621), Chapter 6 (commencing with
32 Section 1760), or Chapter 8 (commencing with Section 1831) of
33 Division 1 of the Insurance Code, as a registered investment
34 adviser pursuant to Chapter 3 (commencing with Section 25230)
35 of Part 3 of Division 1 of Title 4 of the Corporations Code, or as
36 an investment adviser pursuant to Section 202(a)(11) of the federal
37 Investment Advisers Act of 1940.

38 (B) Is licensed to sell securities by the National Association of
39 Securities Dealers (NASD).

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes the following:

(A) The rights and obligations between the licensees arising out of the business relationship relating to insurance or securities transactions.

(B) An explicit limitation on the use of confidential consumer information about a consumer to transactions authorized by the contract and permitted pursuant to this division.

(C) A requirement that transactions specified in the contract fall within the scope of activities permitted by the licenses of the parties.

(b) The restrictions on disclosure and use of confidential consumer information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance producers and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services or to obtain competitive quotes to renew an existing insurance contract, provided that any confidential consumer information disclosed pursuant to this subdivision shall not be used or disclosed except in the ordinary course of business in order to obtain those quotes.

4057. (a) An entity that negligently discloses or shares confidential consumer information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. However, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars (\$500,000) per occurrence.

(b) An entity that knowingly and willfully obtains, discloses, shares, or uses confidential consumer information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation.

(c) In determining the penalty to be assessed pursuant to a violation of this division, the court shall take into account the following factors:

(1) The total assets and net worth of the violating entity.

(2) The nature and seriousness of the violation.

1 (3) The persistence of the violation, including any attempts to
2 correct the situation leading to the violation.

3 (4) The length of time over which the violation occurred.

4 (5) The number of times the entity has violated this division.

5 (6) The harm caused to consumers by the violation.

6 (7) The level of proceeds derived from the violation.

7 (8) The impact of possible penalties on the overall fiscal
8 solvency of the violating entity.

9 (d) In the event a violation of this division results in the identity
10 theft of a consumer, as defined by Section 530.5 of the Penal Code,
11 the civil penalties set forth in this section shall be doubled.

12 (e) This section shall become operative on and after July 1,
13 2004, for acts in violation of this division that occur on and after
14 July 1, 2004.

15 4058. This division shall not be construed in a manner that is
16 inconsistent with the federal Fair Credit Reporting Act (15 U.S.C.
17 Sec. 1681 et seq.).

18 4058.5. Nothing in this division shall be construed as altering
19 or annulling the authority of any department or agency of the state
20 to regulate any financial institution subject to its jurisdiction.

21 ~~4058.6. By the enactment of this division, the Legislature~~
22 ~~occupies the entire field of regulation of the sharing or use of~~
23 ~~confidential consumer information by financial institutions, and~~
24 ~~this division shall preempt and be exclusive of all local ordinances~~
25 ~~and regulations relating thereto. This section shall apply both~~
26 ~~prospectively and retroactively.~~

27 *4058.6. This division shall preempt and be exclusive of all*
28 *local agency ordinances and regulations relating to the use and*
29 *sharing of confidential consumer information by financial*
30 *institutions. This section shall apply both prospectively and*
31 *retroactively.*

32 4059. The provisions of this division shall be severable, and
33 if any phrase, clause, sentence, or provision is declared to be
34 invalid or is preempted by federal law or regulation, the validity
35 of the remainder of this division shall not be affected thereby.